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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,312	07/10/2003	Scott Svend Hendron		3583
7590	02/24/2005		EXAMINER	
Scott S. Hendron 1684 Geraldine Drive Dubuque, IA 52003			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/617,312	HENDRON, SCOTT SVEND <i>CH</i>
	Examiner Urszula M. Cegielnik	Art Unit 3714

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 21-35 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21,22,24-27,31,33 and 35 is/are rejected.
- 7) Claim(s) 23, 28-30, 32, and 34 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Objections***

The preambles of the claims are inconsistent. The preamble of claim 25 recites "a top spindle". On the other hand, the preambles of claims 27-34, which depend from claim 25 recite "a discrete spinning top threaded cylinder" (claims 27 and 28); "a discrete gripping stem threaded cylinder" (claims 29 and 30); "a discrete spinning tip part" (claims 31 and 32); "a discrete gripping stem part" (claims 33 and 34). Correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent Publication No. DE 20016112U1 (hereinafter DE '112).

DE '112 discloses a spinning tip (see separate sheets) forming a lower end extremity of the spindle, the spinning tip having an axis concentric with the spindle axis; and a cylinder having a major diameter less than the rotational inertia member central opening hole and joined integrally with an upper end portion of the spindle, the cylinder having an axis concentric with the spindle axis, and a gripping stem comprising a shaft of axially varying diameter, the shaft having a maximum diameter less than the rotational inertia member central

opening hole and providing means for manual spinning of the toy top assembly, the gripping stem joined integrally to an upper end portion of the spindle and having an axis concentric with the spindle axis.

DE '112 discloses the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a curvilinear form since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. In re Gulack 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of play device does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. the curvilinear form and the substrate e.g. rotational inertia member which is required for patentability.

Claims 21, 22, 25, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent Publication No. DE 20016112U1 (hereinafter DE '112) in view of Hedeen, Jr.

DE '112 discloses a spinning tip (see separate sheets) forming a lower end extremity of the spindle, the spinning tip having an axis concentric with the

spindle axis; and a cylinder having a major diameter less than the rotational inertia member central opening hole and joined integrally with an upper end portion of the spindle, the cylinder having an axis concentric with the spindle axis, and a gripping stem comprising a shaft of axially varying diameter, the shaft having a maximum diameter less than the rotational inertia member central opening hole and providing means for manual spinning of the toy top assembly, the gripping stem joined integrally to an upper end portion of the spindle and having an axis concentric with the spindle axis.

DE '112 does not disclose the cylinder of top spindle being threaded.

Hedeen, Jr. teaches a top spindle having a threaded cylindrical portion (see *Figure 7 and col. 4, lines 3-6*).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the top spindle with a threaded cylinder as taught by Hedeen, Jr., since Hedeen, Jr. states at col. 4, lines 3-6, that such a modification would permit the top spindle to be joined to the top body. Furthermore, such a modification would allow the toy spindle to be positively secured to the top body.

Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 21 and 25 above, and further in view of Jamison, et al.

DE '112, as modified by Hedeen, lacks the gripping stem comprising a grasping feature (i.e. grooved).

Jamison, et al. teach a toy top (10) having a gripping stem (20) having longitudinal grooves (22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the gripping stem with a gripping feature (i.e. grooved) as taught by Jamison, et al., since Jamison, et al. state at col. 2, lines 62-63, that such a modification would aid the spinning grip.

#### ***Allowable Subject Matter***

Claims 23, 28-30, 32, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

**The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3714



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700